HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 940 of 2004 (SS)

Vinay Kumar Joshi s/o Late Harish Chandra Joshi r/o village & Post Uttarora, District Bageshwar ..... Petitioner

Versus

1. State of Uttaranchal
2. Joint Director of Education, Kumaon Region, Nainital
3. District Education Officer, District Bageshwar
4. Principle Inter College Vijaipur (Kanda) District Bageshwar
5. Committee of Management, Inter College, Vijaipur, District Bageshwar. ..... Respondents

Sri B.D. Upadhyay, Advocate for the petitioner
Sri J.C. Pandey and Standing Counsel for the respondents.

Dated: February 12 2007

Hon'ble Rajesh Tandon, J.

Heard Sri B.D. Upadhyay counsel for the petitioner and Sri J.C. Pandey and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondent no. 4 to permit the petitioner to work on the post of Junior Clerk in pursuance of the order passed by the respondent no. 3 dated 21.10.2003 forthwith and pay his salary with arrears w.e.f. the said date.

According to the petitioner his father was working as a clerk in the Krishi Inter College Dofar, District Bageshwar. He died in harness on 30.12.2001. The petitioner is the eldest son of his parents and is intermediate pass as such he is eligible to

be appointed on class III post in the institution. According to the petitioner he was entitled for appointment in the institution in which his father was working. There were two vacancies in class III in that institution, one fall vacant on account of the retirement of one class three employee and another fall vacant on account of death of the father of the petitioner but the petitioner was not appointed on either of the posts.

When no order appointing the petitioner on the compassionate ground was passed by the respondents no. 1, 2 and 3 the petitioner filed writ petition No. 1276 (S/B) of 2002 before this High Court, which is still pending. During pendency of this writ petition the responding no. 3, vide order dated 20.10.2003 appointed the petitioner on the vacant post of clerk in Inter College Vijaipur (Kanda). Pursuant to the order dated 20.10.2003 passed by the respondent no.3 the Authorised Controller of the institution on 21.10.2003 passed order directing the petitioner to join on the post within seven days. The petitioner thereafter approached the respondent no. 4 for joining on the post but he was not permitted to join on the post on the ground that against the vacant post one person Shri Shekhar Chandra Pandey is already working since 1997. The petitioner again approached to the respondent no. 4 on 23.10.2003 but he again refused to permit the petitioner to join on the post.

The petitioner has also submitted that he brought into the notice of the respondent no.3 that at present a vacancy of junior clerk is vacant in Inter College Harsila, District Bageshwar where the petitioner may be appointed but no order is being passed to this effect by the respondent no.3.

In writ petition No. 35 of 2004, filed by Sriu Shekhar Chandra Pandey this Court has passed by following order:

> "In view of above, a writ of mandamus is issued directing the respondents to pay salary to the petitioner for the post of junior clerk and allow him to work continuously.
>
> Accordingly, writ petition is allowed. No order as to costs."

In view of the peculiar circumstances as stated above, a writ of mandamus is issued directing the respondents to consider the absorbing of the petitioner in Class III post in any of the Institution at District-Bageshwar.

Accordingly, writ petition is allowed. No order as to costs.

12th February, 2007 (Rajesh Tandon, J.)

Dhyani